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No. 03-608

In the
Supreme Court of the United States

NATHAN DAVIS, JR.; Jesse Andrews,
Petitioners,
v.
TANGIE JUDY; Danny Mullins,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF ALABAMA, DISTRICT OF COLUMBIA, DELAWARE, HAWAII, LOUISIANA, MISSOURI, NEVADA, SOUTH CAROLINA, UTAH, AND THE VIRGIN ISLANDS AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

1. May a court find state officials deliberately indifferent to the problem of inmate-on-inmate assault at a state custodial detention facility, in violation of the Fourteenth Amendment, when the officials took reasonable steps to ameliorate the problem and did not have the authority to allocate resources to relieve the overcrowding and understaffing that were at the root of the problem, because the court in 20/20 hindsight would have selected other measures to address the problem?

2. Did the abstract principle that a state official may not show "reckless disregard" for known risks at custodial facilities give the state officials in this case fair warning that the steps they took within their power to ameliorate the problem of inmate-on-inmate assault were not enough to satisfy the Fourteenth Amendment, such that these officials are not entitled to qualified immunity?

TABLE OF CONTENTS

ADDITIONAL COUNSEL i

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT 2

ARGUMENT 4

I. This Court Should Grant Certiorari to Correct the Eleventh Circuit's Failure to Give Sufficient Deference to the Difficult Policy Decisions Made by the Georgia Officials Responsible for Administering Georgia's Juvenile Detention System. 5

II. This Court Should Grant Certiorari to Address the Question Left Open in *Wilson v. Seiter* Whether State Officials May Invoke a "Cost" Defense to Claims of Deliberate Indifference. 8

CONCLUSION 11

TABLE OF AUTHORITIES

Cases

Allen v. Wright, 468 U.S. 737 (1984) 10

Bell v. Wolfish, 441 U.S. 520 (1979) 7

Braircliff Haven, Inc. v. Dep't of Human Resources, 403 F. Supp. 1355 (N.D. Ga. 1975) 9

Farmer v. Brennan, 511 U.S. 825 (1994) 4, 9, 10

Hope v. Pelzer, 536 U.S. 730 (2002) 3

Jones v. North Carolina Prisoners' Labor Union, 433 U.S. 119 (1977) 7

Judy v. Walker, No. 02-14042 (11th Cir. May 30, 2003) 3, 5, 8, 9

LaMarca v. Turner, 995 F.2d 1526 (11th Cir. 1993) 8

Parrish v. Dep't of Corrections, 156 F.3d 1128 (11th Cir. 1998) 8

Procunier v. Martinez, 416 U.S. 396 (1974) 6, 7

Sandin v. Connor, 515 U.S. 472 (1995) 7, 8

Saucier v. Katz, 533 U.S. 194 (2001) 2

Thornburgh v. Abbott, 490 U.S. 401 (1989) 6

Turner v. Safley, 482 U.S. 78 (1987) 7

Whitley v. Albers, 475 U.S. 312 (1986) 7, 8

Wilson v. Seiter, 501 U.S. 294 (1991) 4, 8, 9, 10

Statutes

Ga. Code Ann. §§ 15-11-46, -47(a)(3), -49 (2001) 9

Constitutional Provisions

Ga. Const. art. VI, § 1, ¶¶ 1, 4 9

Other Authorities

H.R. Conf. Rep. 104-378 (1995) 8

Michael J. Dale, *Lawsuits and Public Policy: The Role of Litigation in Correcting Conditions in Juvenile Detention Facilities*, 32 U.S.F. L. Rev. 675 (1998) 6

INTEREST OF AMICI CURIAE

The amici States and Territory submit this brief in support of petitioners Nathan Davis and Jesse Andrews. At all times relevant to this case, Davis was the director of the Division of Detention Services of the Georgia Department of Juvenile Justice. Andrews was the director of the Gwinnett Regional Youth Detention Center in Lawrenceville, Georgia, one of the facilities under Davis's supervision. The Eleventh Circuit Court of Appeals held that Davis and Andrews were not immune from a § 1983 suit brought against them by a juvenile inmate who was assaulted by another juvenile inmate at the Lawrenceville detention center.

Amici urge this Court to grant the petition for certiorari and reverse the judgment of the Eleventh Circuit. The amici States have an interest in maintaining their prerogative to develop and implement policies regarding custodial detention. They also have an interest in protecting their agents from the inconvenience and expense of litigation and from financial liability for policy choices made under conditions that their agents cannot control. These interests are threatened by the ruling of the Eleventh Circuit. The ruling exposes Davis and Andrews to suit despite the numerous measures they each took to address the problem of inmate-on-inmate assaults. It also exposes them to suit for conditions that they could not control: overcrowding, understaffing, and constant willful misbehavior on the part of numerous juvenile inmates.

While the Eleventh Circuit's ruling addressed a juvenile detention facility, the ruling applies perforce to adult correctional facilities run by the States. The ruling would also seem to apply to other state custodial

regimes such as foster care and mental health facilities. The amici States each have tens of thousands of persons in these types of custodial detention. The State of Alabama alone has custodial care of approximately 40,000[1] persons (one percent of the total state population) in its Department of Corrections, Department of Human Resources, Department of Mental Health, and Department of Youth Services. The ruling of the Eleventh Circuit opens the door for many of these individuals to sue the state officials responsible for supervising their detention facilities, and to strip these officials of their qualified immunity, if the individuals can convince a court to exercise 20/20 hindsight and rule that another remedial measure not taken by the officials might have prevented the problem. This kind of standard will dilute qualified immunity of its intended protective effect and will chill state officials in the exercise of their public duties.

SUMMARY OF ARGUMENT

As in most qualified immunity cases, this case presents two separate but related questions. Under *Saucier v. Katz*, 533 U.S. 194 (2001), they must be addressed in the following order. First, did the actions of the state officials, as alleged, violate the Fourteenth Amendment? Second, if they did violate the Fourteenth Amendment, was the law so "clearly established" that the state officials had "fair warning" that their actions violated the Fourteenth Amendment?

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[1] Counsel for the State of Alabama calculated this figure during the week prior to the filing of this brief from internal documents and interviews with agency officials.

As for the second question, amici agree with the petitioners' analysis in part II of their petition. The Eleventh Circuit has misread *Hope v. Pelzer*, 536 U.S. 730 (2002), to liberate it of the need to consider whether any cases with remotely similar facts were available to give Davis and Andrews fair warning that the actions they were taking violated the Fourteenth Amendment. Although *Hope* made clear that, in egregious circumstances, the constitutional violation may be so obvious that on-point precedent is not necessary to give a state official fair warning, *Hope* did not unleash the lower courts to equate 20/20 hindsight with obviousness. Nor did *Hope* permit the courts to treat abstract legal standards as "clearly established" and therefore sufficient to put a state official on notice that he is committing a constitutional violation in a particular case. The Eleventh Circuit found it "clearly established that a prison administrator violates an inmate's Fourteenth Amendment rights when the administrator recklessly disregards known dangers of inmate-on-inmate violence." *Judy v. Walker*, No. 02-14042 (11th Cir. May 30, 2003) (per curiam) (Pet. App. 20a). This statement is true, but it begs the question of when an administrator has been "reckless". The Eleventh Circuit cited no precedent and provided no analysis why Davis and Andrews should be have been on notice that the considerable efforts they made to improve conditions at the Lawrenceville detention center were recklessly insufficient to satisfy the Fourteenth Amendment. This misreading of *Hope v. Pelzer* warrants certiorari review in its own right.

Amici submit this brief primarily, however, to urge certiorari review of the first question: whether Davis and Andrews committed any Fourteenth Amendment violation. Amici believe that a correct answer to this question is essential to their ability to maintain

custodial facilities free from the chilling effect of harassing lawsuits and potential monetary liability. In analyzing the Fourteenth Amendment, the Eleventh Circuit made two critical errors that warrant certiorari review.

First, the Eleventh Circuit flouted the well-settled principle that federal courts should defer to the policy choices of state officials when analyzing the constitutionality of state custody regimes. This Court has held in many cases that state policymakers deserve considerable leeway in making difficult decisions balancing competing considerations that are not always within their immediate control. The Eleventh Circuit here wandered far afield of that precedent and showed little deference to the petitioners in this case.

Second, this case presents this Court with the opportunity to expand upon the "cost" defense first mentioned in *Wilson v. Seiter*, 501 U.S. 294, 302 (1991). It also presents the Court with an opportunity to clarify the subjectivity requirement of *Farmer v. Brennan*, 511 U.S. 825, 837 (1994), which appeared to limit the liability of state officials when they have taken affirmative steps to cure an existing problem but were not entirely successful. Here, petitioners employed five measures to cure any problems that existed at the detention facility and were unable to create massive reforms because of limitations placed on them by the state constitution. Under these circumstances, petitioners should not be held to have violated the Fourteenth Amendment.

ARGUMENT

Petitioners Davis and Andrews took five different steps to curtail inmate-on-inmate assaults at the

Lawrenceville detention center. Nevertheless, the Eleventh Circuit held that Davis and Andrews were deliberately indifferent to the risks of assault, because they might have taken even more measures that might have prevented the assault that occurred in this case. *Judy v. Walker*, No. 02-14042 (11th Cir. May 30, 2003) (per curiam) (Pet. App. 18a-19a, 23a). This poorly reasoned opinion now threatens to expose numerous state officials to liability by permitting a court to second-guess the manner in which the officials address difficult problems that are not entirely within their control. The Eleventh Circuit reached this decision by disregarding this Court's repeated admonitions to defer to the policy-making authority and expertise of state legislative and executive bodies. The ruling of the Eleventh Circuit, if taken to its logical conclusion, will undermine state prerogative in the administration of their custodial facilities and will eviscerate qualified immunity.

I. This Court Should Grant Certiorari to Correct the Eleventh Circuit's Failure to Give Sufficient Deference to the Difficult Policy Decisions Made by the Georgia Officials Responsible for Administering Georgia's Juvenile Detention System.

This Court has consistently afforded state-level policymakers a high degree of deference when those officials make decisions regarding the operation of state custody regimes. The most readily employable example of this deference is in the operation of state correctional facilities. There is little principled distinction between the state correctional facilities that this Court has extensively discussed and the youth detention facility at issue in the present case. Further, it is imminently foreseeable that plaintiffs

will use the decision of the Eleventh Circuit as a vehicle to attack state-level decision-making in the administration of other custodial regimes, including mental health facilities, hospitals, juvenile detention facilities, and foster care programs — an effort that some advocates have undertaken for several years.[2]

In *Procunier v. Martinez*, 416 U.S. 396, 405 (1974), *overruled in part by Thornburgh v. Abbott*, 490 U.S. 401 (1989),[3] this Court stated that "courts are ill-equipped to deal with the increasingly urgent problems of prison administration". The Court restated that the judicial branch has traditionally "adopted a broad hands-off attitude toward the problems" associated with the operation of state facilities, and the Court correctly reasoned that the problems associated with operating those facilities "are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree." *Martinez*, 416 U.S. at 404-05.

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[2] *See, e.g.*, Michael J. Dale, *Lawsuits and Public Policy: The Role of Litigation in Correcting Conditions in Juvenile Detention Facilities*, 32 U.S.F. L. Rev. 675 (1998). Because attorneys for potential plaintiffs will argue that all state custodial facilities should be subject to the same arguments traditionally used against adult-level correctional facilities, amici urge that this Court similarly employ the same deference to the state officials in this and other cases that it would to officers in adult correctional facilities. This similarity has also been recognized by federal circuit courts. *E.g.*, *Alexander v. Boyd*, 113 F.3d 1373 (4th Cir. 1997) (applying provisions of the Prison Litigation Reform Act to juvenile facilities).

[3] Though partially overruled by *Thornburgh*, the rationale and legitimacy of the quoted portions of *Martinez* remain undisturbed. In fact, *Thornburgh* mandated a greater degree of deference to state officials. 490 U.S. at 413-14.

The Court has repeatedly shown deference to state officials and the regulations that they have promulgated in numerous cases. *See, e.g., Sandin v. Connor*, 515 U.S. 472, 482 (1995) ("[F]ederal courts ought to afford appropriate deference and flexibility to state officials trying to manage a volatile environment"); *Turner v. Safley*, 482 U.S. 78, 89-90 (1987) ("[A] standard [of deference] is necessary if 'prison administrators ..., and not the courts [are] to make the difficult judgments concerning institutional operations'") (quoting *Jones v. North Carolina Prisoners' Labor Union*, 433 U.S. 119, 128 (1977)); *Bell v. Wolfish*, 441 U.S. 520 (1979). Further, the Court has recognized that the comprehensive planning and resource allocation decisions that must be made to operate state custody regimes "are peculiarly within the province of the legislative and executive branches of government." *Martinez*, 416 U.S. at 405. Deference to state officials covers responses not only to specific incidents to which officials are forced to respond, but also to "prophylactic or preventive measures intended to reduce the incidence of ... breaches of prison discipline." *Whitley v. Albers*, 475 U.S. 312, 322 (1986).

Even the Eleventh Circuit has acknowledged that

> Congress's intention in enacting the [Prison Litigation Reform Act] looks to be in line with the Supreme Court's view on the involvement of the federal courts in state prison systems. Both Congress and the Court suggest a reduced role for federal courts. When confronted with state prison litigation, the Supreme Court has written that "involvement of federal courts in the day-to-day management of prisons [has led to] squandering judicial resources with little offsetting benefit to anyone .... [F]ederal courts

> ought to afford appropriate deference and flexibility to state officials trying to manage a volatile environment ...."

Parrish v. Dep't of Corrections, 156 F.3d 1128, 1129 n.2 (11th Cir. 1998) (alterations in original) (citing and quoting *Sandin v. Conner*, 515 U.S. 472, 482 (1995)). "Congress designed Section 3626 to ensure that prospective relief is the '*minimum* necessary to correct the violation of a federal right.'" *Id.* (quoting H.R. Conf. Rep. 104-378 (1995)) (emphasis in original). In fact, even here, the Eleventh Circuit acknowledged that its ruling came "perilously close" to the judicial second-guessing of "difficult" state policy questions. *Judy v. Walker*, No. 02-14042 (May 20, 2003) (Pet. App. 19a, 23a) (citing *LaMarca v. Turner*, 995 F.2d 1526, 1538 (11th Cir. 1993)).

Deference "requires that neither judge nor jury freely substitute their judgment for that of officials who have made a considered choice." *Whitley*, 475 U.S. at 322. Because the Eleventh Circuit ignored that principle here, this Court should grant certiorari to review and reverse the judgment of the Eleventh Circuit.

II. This Court Should Grant Certiorari to Address the Question Left Open in *Wilson v. Seiter* Whether State Officials May Invoke a "Cost" Defense to Claims of Deliberate Indifference.

A state official responsible for administering a state custodial facility cannot violate the Fourteenth Amendment without exhibiting "deliberate indifference" to the custodial condition at issue. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994); *Wilson v. Seiter*, 501 U.S. 294, 303 (1991). In turn, a state

official cannot be deliberately indifferent "unless the official knows of and disregards an excessive risk to inmate health or safety." *Farmer*, 511 U.S. at 837.

In *Wilson v. Seiter*, 501 U.S. 294 (1991), this Court wrote that "the validity of a 'cost' defense as negating the requisite intent is not at issue in this case, since respondents have never advanced it." *Id.* at 302. Here, by contrast, the petitioner state officials have made a compelling case that they did not have the resources necessary to alleviate the overcrowding and understaffing problems that led to the inmate-on-inmate assault. Petition for a Writ of Certiorari, Davis v. Judy, No. 03-0608, at 4-6. This Court should grant certiorari to address whether a lack of resources may negate the subjective intent required to make out "deliberate indifference" under *Wilson* and *Farmer*.

Here, Davis and Andrews had neither the discretion to turn away juveniles that the courts sent to them nor the constitutional authority to increase their budget to a level that would cure the overcrowding problems at the root of this case. Ga. Const. art. VI, § 1, ¶¶ 1, 4; Ga. Code Ann. §§ 15-11-46, -47(a)(3), -49 (2001); *see also Braircliff Haven, Inc. v. Dep't of Human Resources*, 403 F. Supp. 1355, 1361 (N.D. Ga. 1975). Furthermore, Davis and Andrews took five remedial measures to cure the defect. *Judy v. Walker*, No. 02-14042 (11th Cir. May 30, 2003) (per curiam) (Pet. App. 17a) (listing the five remedial measures taken to prevent assaults at the Lawrenceville detention center). These measures should have been sufficient to grant them qualified immunity from suit.

Davis and Andrews did not turn a blind eye to the problems facing the Lawrenceville detention center. They repeatedly took steps within their power to ensure the safety of the juveniles in their charge. They

should not therefore be legally responsible for the decision of higher-ranking officials to allot them a finite amount of resources to run the center. They should not be responsible for the decision of the coequal judicial branch to sentence juveniles to the Lawrenceville detention center.

Amici do not contend that all modes of legal recourse should be foreclosed to individuals like respondents. Respondents simply need to identify and sue the properly responsible parties. After all, "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen v. Wright*, 468 U.S. 737, 751 (1984). To be true to the subjective intent requirement of *Farmer*, a defendant who has some element of subjective culpability should be the party against whom a judgment of personal liability is rendered. 511 U.S. at 837. When, as here, the defendants took numerous steps to alleviate the problem and were handcuffed by budgetary restrictions beyond their control, they should not be deemed to have violated the Fourteenth Amendment.

In short, the Court should grant certiorari review in this case to consider the validity of the "cost" defense, a question the Court left open in *Wilson v. Seiter*. Amici urge that this Court accept the "cost" defense, because it comports with the subjectivity requirement of *Farmer* and vindicates bedrock principles of justiciability. Simply put, petitioners Davis and Andrews have been sued, and have been stripped of their qualified immunity, for circumstances that they could not help.

CONCLUSION

For the foregoing reasons, this Court should grant certiorari review to reverse the ruling of the Eleventh Circuit Court of Appeals.

Respectfully submitted,

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